

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Clarion Hotel
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, August 26, 2010

Attending:

John R. Corne, Dr. Diana Antonacci, Dr. Richard Brunstetter, Jennifer Brobst, Dr. John S. Carbone, Debra Dihoff, Dr. Thomas Gettelman, Dr. Ranota T. Hall, Dr. John J. Haggerty, Matthew Harbin, A. Joseph Kaiser, Emily Moore, Nancy Moore, Phillip A. Mooring, Beverly Morrow, Dr. Greg Olley, Larry Pittman, Pamela Poteat, Elizabeth Ramos, Jerry Ratley, Don Trobaugh, David R. Turpin

Excused Members:

Cindy Ehlers, John Owen, Dr. James W. Finch

Other Absences:

Norman Carter, Carl Higginbotham

Division Staff:

Leza Wainwright, Steven Jordan, Steven E. Hairston, W. Denise Baker, Marta T. Hester, Andrea Borden, J. Luckey Welsh, Beth Melcher, Michelle Edelen, Cheryl Riggins

Others:

Robin Huffman, Ann Rodriguez, Ann Ferrari, Louise G. Fisher, Fred Aikens, Martha Brock, Sharita Lawson

Handouts:

1. DHHS - DMH/DD/SAS – Selected Budget Items
2. New NC DMH/DD/SAS Reporting Requirements

Call to Order:

John R. Corne, Chairman, called the meeting to order at 9:35 a.m. He asked for a moment of reflection, and introductions from the members of the NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission) and the public. Chairman Corne reviewed the ethics reminder and reminded the members about the ethics training requirements. He also introduced Beth Melcher, DHHS Assistant Secretary for Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS) and Steven Jordan, newly appointment Director, DMH/DD/SAS.

Divisions Directors' Reports

Leza Wainwright gave an update on the 2010 budget and reviewed a summary sheet on the final approved budget by the NC General Assembly for the Department.

Elizabeth Ramos, Commission member, questioned if the line item, Eliminating School-Based Child & Family Team Care Coordinators, was part of converting the Whitaker School to a Psychiatric Residential Treatment Facility (PRTF). Ms. Wainwright stated that the Elimination of School-Based Child & Family Team Care Coordinators' line item was an actual reduction in the Governor's budget that was not taken in the final budget enacted by the General Assembly.

J. Luckey Welsh, Director, NC Division of State Operated Healthcare Facilities (DSOHF), provided an overview of the state facilities and addressed the issues below:

- The Alcohol and Drug Abuse Treatment Centers (ADATCs) are continuing to provide excellent service, particularly since they are now doing acute admissions. Walter B. Jones is currently conducting a pilot program related to smoking cessation, as approved by the Commission. The program is going well and a report will be brought to the Commission upon completion.
- The O'Berry Neuro-Medical Center is in the process of being converted into a Skilled Nursing Facility (SNF). Some of the proposed changes have been put on hold due to the budget crisis and will be pending appropriation by the General Assembly. The Longleaf Neuro-Medical Center has converted a nursing unit into what is called "Main Street". The patients can get their cappuccinos, etc., there. Mr. Welsh stated that he will make sure the Commission has notice of when an open house is planned so they have the opportunity to visit.
- Some of the beds from the developmental centers have been converted to beds for the Community Intermediate Care Facility for the Mental Retarded (ICF/MR). There were opportunities for this in several counties including Guilford, Wake, Pitt, Mecklenburg, Buncombe, and New Hanover County. Certificates of need were filed in each of these counties, with the exception of Buncombe and New Hanover County.
- Central Regional Hospital (CRH), Cherry Hospital and Dorothea Dix Hospital recently underwent their tri-annual Joint Commission survey and received high marks for the quality care provided. The Division feels very good that three of the four hospitals are now Joint Commission accredited. Broughton Hospital will be undergoing the survey for Joint Commission accreditation this fall.
- The Whitaker School is in the process of being converted to a PRTF. The Joint Commission will be visiting the school in September.
- Cherry Hospital is currently renovating old units where renovations could not wait until construction of the new hospital; the renovations should be completed by October 2010. The ground breaking for the new site will take place on October 1, 2010. Cherry Hospital has also opened a special unit that can be called an intensive care unit, which is a smaller unit with a higher staff ratio to handle the more aggressive patients in the facility.
- Secretary Cansler announced this week that cost reduction measures were being done at Dorothea Dix Hospital as the NC General Assembly has not appropriated money for some time to operate the hospital. The original plan was to operate the hospital as a 97 bed hospital, but the cost would be around 30 million to operate. All of the acute beds will be moved from Dorothea Dix Hospital by the end of 2010. The minimum forensic unit will be kept there until the Secretary determines a time for closure.

- The Division continues to struggle with delays in admissions to the state hospitals as well as delays in care at the emergency rooms. Mr. Welsh asked Ms. Wainwright to provide an update on the committee she was chairing which is also focusing on these issues:
 - Ms. Wainwright stated that the committee, which consisted of County Commissioners, Hospital Association, Sheriff's Association, Local Management Entities (LMEs), DSOHF, DMH/DD/SAS and Secretary's Office representation, began by trying to tackle the problem of long waits in hospital emergency departments and the impact that this has on the hospitals, Sheriff's Deputies and on the individuals themselves who are not receiving needed treatment while waiting for a hospital bed. The Division has developed a short eight question checklist that law enforcement and hospital emergency department staff can review together to make a determination when it would be appropriate for the Sheriff's Deputy to leave and return to his duty station and when it would be necessary for him to remain with the consumer at the hospital emergency department. The Division has also worked with the LMEs and reiterated that it is the LMEs responsibility to find a bed if someone from their catchment area is in a hospital emergency department awaiting psychiatric services. The Division has developed a listing of the services that mobile crisis teams can deliver both inside and outside of hospital emergency departments.
- The NC General Assembly has given some education money for the facilities for working with direct care employees and supervisory management.
- The Office of Educational Services will be closing and the responsibilities of the deaf and blind schools have been transferred over to the NC Department of Public Instruction.

The Commission asked the following questions after the Division Directors' Reports:

- Debra Dihoff, Commission member, stated her concern regarding the wait times for the state and community hospitals and asked if the Commission could receive a written report of a tracking matrix on the wait time for state hospitals so this could be examined along with the community hospital wait times. Ms. Dihoff also asked if the discharge location could be added in the tracking report. Mr. Welsh stated that he could accommodate her request and would bring a report to the Commission.
- Dr. Diana Antonacci, Commission member, stated that an increase in patient beds is only a very small part of the problem because a lot of the people who end up waiting in emergency departments do not need inpatient beds; they need a continuum of care in the community. Ms. Wainwright agreed and opined that the Critical Access Behavioral Health Agencies (CABHA) are expected to do the kind of monitoring that Ms. Dihoff mentioned earlier.
- Don Trobaugh, Commission Member, asked if there was enough communication from the field to the Director's desk when something goes wrong. Ms. Wainwright responded that she finds out about a lot of things just like everybody else and stated that hospital emergency departments have not routinely called the state office when they have these challenges. The Division really wants the line of communication to be with the LMEs. She further added that there are some places where the communication flows more freely and other places where communication seems limited.

Ms. Wainwright provided an update on CABHA and informed the Commission that there is a map on the Division's web site that shows there are currently only four counties in North

Carolina that do not have a certified CABHA offering services in that county. Ms. Wainwright stated that there is a transition workgroup which consists of CABHAs, LMEs, Division staff and consumer and family members working to ensure individuals who are currently served by providers that will not become CABHA are transitioned to CABHA providers. The LMEs are getting specific data so they know by name their consumers who are currently receiving services from non-CABHA providers and need to be transitioned. Ms. Wainwright clarified that the Division expects applications for CABHA to continue beyond August 31st. The deadline is geared toward agencies providing Day Treatment, Intensive In-home and Community Support Team services; any provider will have to cease delivery of those services if not certified as a CABHA by December 31st. The Division has said that if an application is in and complete by August 31st, the Division will guarantee that they will get the provider through the certification process to become a CABHA by December 31st.

Ms. Wainwright also took the opportunity to inform the Commission that it has been a tremendous honor to work with them and thanked them for their service.

Approval of Minutes

Upon motion, second and unanimous vote, the Commission approved the minutes of the May 27, 2010 meeting.

Advisory Committee Report

Larry Pittman, Chairman, Advisory Committee, stated that the Advisory Committee members were assigned to subcommittees and the guidelines, parameters, and timelines were discussed. The three subcommittees are as follows: 1) Community Support Services, with an emphasis on CABHA; 2) Workforce Development; and 3) Veterans Access to MH/DD/SAS, with a particular focus on Traumatic Brain Injury.

Mr. Pittman reported that the second part of the meeting consisted of the committee members participating in breakout sessions with their assigned subcommittee. Each group also selected its subcommittee chair and provided brief updates when the Advisory Committee reconvened; those updates included identifiable goals and outcomes. The subcommittee chairs are as follows: 1) Dr. Thomas Gettelman – CABHA; 2) Phil Mooring – Workforce Development; and 3) Dr. Ranota Hall – Veterans Access.

Rules Committee Report

Jerry Ratley, Chairman, Rules Committee, stated that the first order of business was to complete the review of the Prison Rules (10A NCAC 26D). Mr. Ratley explained that these rules have been a work in progress for the last four years. Mr. Ratley stated that after a series of meetings, the Rule Committee was left with two rules from the Section (Seclusion and Restraint); those amendments were approved at the July meeting. Mr. Ratley reiterated that all the proposed amendments to rules in the Section have been approved by the committee and are before the full Commission for an initial review. Mr. Ratley explained that once the rules are approved by the full Commission they will be submitted to Secretary Keller, Department of Correction, and his staff for review and/or comments. Mr. Ratley stated the committee approved the proposed amendment of Non-Medicaid Appeal Rules 10A NCAC 27I .0600 and 10A NCAC 27G .7004, presented to the full Commission for approval of publication.

The Commission thanked Leza Wainwright for her hard and diligent work over the years and wished her well in retirement.

2011 Proposed Meeting Schedule

Steven E. Hairston, Section Chief, Operations Support Team, DMH/DD/SAS, presented the proposed 2011 Meeting Schedule.

Upon motion, second and unanimous vote, the Commission approved the 2011 Proposed Meeting Schedule with the meetings being held on the fourth Thursday of the month. The Commission also approved alternating the meeting times of the Rules and Advisory Committee meetings.

Proposed Adoption of 10A NCAC 27E .0300 – NC Interventions Quality Assurance Committee

Mr. Hairston gave the presentation on the proposed adoption of Rules 10A NCAC 27E .0300 – NC Interventions Quality Assurance Committee. Mr. Hairston stated that these rules had been before the Rules Committee and full Commission during the last year. However, the Rules Review Commission (RRC) objected to the proposed amendments; the RRC challenged the lack of authority for some things as proposed and questioned some of the more detailed information included in the rules. Mr. Hairston stated that staff was before the Commission today seeking approval to withdraw the rules from the RRC and work on the rules to overcome the objections.

Upon motion, second and unanimous vote, the Commission approved the withdrawal of Rule 10A NCAC 27E .0300 – NC Interventions Quality Assurance Committee from the RRC so that staff may work on the objections and resubmit.

Proposed Amendment of 10A NCAC 27I 0600 – Non-Medicaid Appeals Process

W. Denise Baker, Team Leader, Division Affairs Team, Operations Support Section, DMH/DD/SAS, gave the presentation on the Proposed Amendments of 10A NCAC 27I, Section .0600. The Commission has authority to adopt rules establishing a process for non-Medicaid eligible clients to appeal to the Division of MH/DD/SAS decisions made by a LME affecting the client. The purpose of the appeal process is to ensure that MH/DD/SA services are delivered within available resources, to ensure appropriate application of and compliance with applicable statutes and rules, and to provide additional opportunities for the LME to resolve the underlying complaint. The Commission asked the Division to present proposed amendments to the rules in order to alleviate the need for further requests for a waiver to allow a Hearing Officer, rather than a Panel, to conduct these appeals. Ms. Baker reviewed the rules and recommendations from the Rules Committee that had been incorporated into the rules. The rules are being presented to the full Commission for approval of publication in the NC Register.

Ms. Baker received the following questions and comments from the Commission:

- Mr. Trobaugh asked why the hearings could not be recorded. Ms. Baker responded that the Division had discussed this with the Attorney General's Office and that they were instructed not to make transcripts or recordings of the proceedings. Mr. Corne also reminded the Commission of the cost that would be incurred to record and transcribe meetings. Mr. Trobaugh asked that if someone wanted to make his or her own recording would it be permissible. Ms. Baker responded that they could make written notes, but no one is allowed to record the meeting; the proceeding is informal.
- Dr. Ranota Hall, Commission member, asked how the consumer would know that they can ask for a telephonic hearing. Ms. Baker responded that it would be incorporated into the generic form letter that is sent to the consumer.

- Mr. Ratley clarified that the report requested by the Rules Committee to be added into the rule should include both the number of appeals and the outcomes thereof.
- Emily Moore, Commission member, asked if someone was disabled (blind, deaf, etc.) would they be able to record. Mr. Corne stated that they should be able to make this recording and that what the Division was saying is that they are not going to incur a fee for a verbatim transcript of the hearing, which can be extremely costly. Ms. Baker responded that the Division had not considered this issue and what the Division would have to look at would be what reasonable accommodations consumers might need and how the Division would work this out in talking with the Attorney General's Office; the Division was told not to have any recording of the proceedings.
- Dr. Hall stated that the problem might be in the language of rule 10A NCAC 27I .0607(g) where it states that no transcript shall be made and no party shall be allowed to record the proceedings. Dr. Hall suggested that the language be changed.

The Rules Committee made the following recommendations regarding Rules 10A NCAC 27I .0600:

- 10A NCAC 27I .0607(g) – change line 20 to read as follows: No transcript shall be made.
- 10A NCAC 27I .0609(c) – change line 10 to read as follows “The Division shall report annually to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services the number of appeals and the outcome”.

Upon motion, second, and unanimous vote, the Commission approved the proposed amendments to Rule 10A NCAC 27I Section .0600, as amended with modifications, to be forwarded for publication.

Proposed Amendment of 10A NCAC 27G .7004 – Appeals to the Area Authority or County Program Regarding Utilization Review Decisions for Non-Medicaid Services

Ms. Baker gave the presentation on the proposed amendment of Rule 10A NCAC 27G .7004. The Division proposed amending the rule, which sets forth requirements regarding non-Medicaid consumer appeals to the LME. Ms. Baker stated that all consumers must complete the appeal process at their LME before they may file their appeal with the state. The proposed amendment was intended to clarify who may file the appeal at the LME level, as well as remove redundant phrasing. This rule is a Secretary rule, and the proposed amendment is being presented to the full Commission for information and comment.

Ms. Baker stated that the Rules Committee asked that a line be added that stated “*the LME Director shall assign the appeal for clinical review of their utilization review decision*”. This line has been incorporated into the rule. Ms. Baker stated that clarification had been made to the types of days (calendar versus business) due to some inconsistency in the rule.

Proposed Amendment/Adoption of 10A Subchapter 26D, North Carolina Department of Correction: Standards for Mental Health and Mental Retardation

Mr. Corne explained that these rules have been on the table for some time and have been thoroughly reviewed by the Rules Committee. Mr. Corne continued that the Commission's review is really just the first small step to get the rules in place and that after the Rules are approved by the Commission they will be sent to the NC Department of Correction for review and comment.

Mr. Ratley stated that about four years ago these rules came before the Commission as a result of a decision to amend the rules; the Commission is granted authority to promulgate rules for the delivery of mental health and mental retardation services for inmates in custody of the Department of Correction (DOC) pursuant to NCGS § 148-19. The Chairman of the Commission at that time established a workgroup to help formulate language for amending these rules. Mr. Ratley further stated that the last two components of these rules to be reviewed by the Rules Committee were restraint and seclusion. Mr. Ratley stated that throughout this process they have tried to advertise and make it known that the rules were being presented by giving regular updates and by staff informing stakeholders; the Committee has received a considerable amount of input from the stakeholders. The rules are being presented today in the form that represents the best work of the workgroup and the Rules Committee's review.

Further discussion on the rule came from comments by Jennifer Brobst, Commission member, adding that it was not an easy task to go through the Prison Rules. Ms. Brobst stated that Mr. Ratley did a very good job keeping the committee on task and the Committee was fortunate to have Ms. Betty Gardner from DOC, as well as the input from stakeholders. Ms. Brobst stated that they went through the rules in part and never really got to some of the key definitions; for example, references to ankle straps or cuffs remain in the restraint definition. Ms. Brobst stated that by the time the committee got to the restraint section in the review of the second half of rules it was too late to go back and vote. Ms. Brobst further stated that the Rules Committee also had a discussion regarding this and realized that this was just step one and the rules will go to public comment and come back for further review. Ms. Brobst stated that the Committee fully expects to receive comments and it would be better to have received public comments before deciding how to define restraint and seclusion. The Rules Committee worked very hard in trying to make these rules more humane over all, but asked that the full Commission note that even though the wording is in the definition does not mean that the Rule Committee agreed, they just were not able to touch on the definition due to the order the rules were reviewed.

Mr. Ratley stated that the Rules Committee has informed staff of the rules where they would like to tweak the language further when the rules come back for the second review.

Upon motion, second, and unanimous vote, the Commission approved the proposed amendments and adoptions to Rule 10A NCAC 26D as written, to be forwarded to the Department of Correction for review and comments.

Public Comment Period

Louise Fisher stated that she appreciated the fact that one of the Commission member's brought up the fact that they needed the discharge destination reports and recommended that DHHS reinstate the full report so that the community can know where the people are being sent.

Adjournment

There being no further business the meeting was adjourned at 11:45am